

Appl. No. 10/792,015
Amdt. Dated March 27, 2006
Reply to Office Action of November 25, 2005

REMARKS / ARGUMENTS

Claims 1-7 and 9-27 are pending in this application. Claims 1, 2, and 8 have been amended. No new matter has been added.

Claim Rejections - 35 USC 112

In the Office Action, the Examiner has rejected claims 8-14 and 21-26 under 35 U.S. C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the specification as originally filed fails to provide support for the lower limit of 1% in the claimed limitations of "from 1% to 15% cyclic-olefin copolymer and from 1% to 25% softening olefin copolymer". Applicant respectfully points out that claim 8 has been amended in order to obviate this rejection. The lower limits of the claimed limitations of "from 1% to 15% cyclic-olefin copolymer and from 1% to 25% softening olefin copolymer" have been replaced with 0% and 5%, respectively. Basis for the lower limit of 0% cyclic-olefin copolymer in the outer layers can be found in the example films. Basis for the lower limit of 5% softening olefin for the outer layers can be found in the disclosure of a lower limit of 5% for outer layers in paragraph 32. It should also be noted that the limitation of "from 0% to 15% cyclic-olefin copolymer and from 0% to 25% softening olefin copolymer" was present in claim 8 as originally filed.

Claim Rejections - 35 USC 103

The Examiner has also rejected claims 1-26 of the present application under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,068,936 issued to Peiffer et al, (herein, "Peiffer"), in view of U.S. Patent No. 6,479,138 issued to Childress (herein, "Childress"), U.S. Patent No. 5,632,843 issued to Lustig et al. (herein, "Lustig"), and Lamonte et al. ("Stiffer, Thinner Packaging Films with Improved Sealing Using Cyclic Olefin Copolymers).

Applicant respectfully submits that the Examiner's reliance on Peiffer as a primary reference is misplaced. Applicant first notes that to support a conclusion the claimed invention is directed to obvious subject matter, all of the limitations in the claim must be addressed. See *In re*

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Wilder, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). Unlike Peiffer, the presently amended claims comprise 2%- 25% softening olefin copolymers in addition to linear low density polyethylene. The present inventors have found that softening olefins, when blended with polymers and copolymers suitable for shrink films, will further increase water bath shrinkage (Spec., paras. 31 and 62). Peiffer does not disclose the claimed combination of softening olefins and linear low density polyethylene. As Peiffer is directed to films suitable for twist wrapping, not shrink films, Peiffer does not even suggest that increased water bath shrinkage is a desired property. Thus, there is also no motivation or incentive for modifying Peiffer to include softening olefin copolymers in order to arrive at the presently amended claims.

Indeed, a primary purpose of Peiffer is to avoid the use of process measures such as stretching and bubble processes (See col. 1, lines 20-25 and 40-55), yet the present claims explicitly include them (see claims 6, 13, 20-22, and 26). For at least these claims, it is abundantly clear that it is improper to modify Peiffer as suggested under MPEP 2143.01 since "[i]f [a] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)."

Furthermore, even when every element of a claimed invention is found in the prior art, "identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention." *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed.Cir.2000). Rather, "particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." *Id.* Applicant respectfully points out that the films of the present invention comprise less than 1% polypropylene. Peiffer, on the other hand, teaches that films comprising increased, not lesser, amounts of polypropylene are preferred. For example, the Peiffer films comprise a COP-containing layer, which preferably includes 70%-98% propylene polymer, and at least one further layer, which preferably includes 90-99.5% propylene polymer. This further confirms that Peiffer does not provide any motivation to arrive at the presently claimed films which comprise, at most, a negligible amount of polypropylene.

The Examiner suggests that by combining the teachings of Peiffer, Childress, Lustig, and

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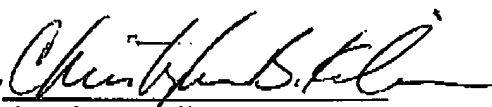
Lamonte, one would arrive at the presently claimed invention. However, as discussed above, there is no motivation to modify Peiffer in order to arrive at the presently claimed invention. In addition, even if Peiffer could be properly combined with the secondary references, one would not arrive at the present invention. The secondary references fail to supplement the above-noted deficiencies in Peiffer. None of the references cited by the Examiner disclose a multilayer-film comprising a combination of softening olefins and linear low density polyethylene in the outer layers.

In view of the above information and remarks, Applicant respectfully requests reconsideration of the current rejections. Applicant submits that based on the foregoing, claims 1-26 in their present form are allowable over the cited prior art. Applicant further requests that a timely Notice of Allowance be issued in this case.

Conclusion

Should any further questions arise concerning this application or in the event the above amendments do not place the application in condition for allowance, Applicant respectfully requests an interview with the examiner and the examiner's supervisor prior to any new office action relating to the present Application. Attorney for the Applicant may be reached at the number listed below.

Respectfully Submitted,

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